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# Republican Policy Committee

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## **Prisoner Kills Fellow Inmate**

### **Fourteen Years Later, His Appeals Still Thrive**

In 1975, Thomas Eugene Creech was convicted of first degree murder in the deaths of Edward T. Arnold and John W. Bradford and was sentenced to death. Four years later, on the basis of the U.S. Supreme Court's decision in *Woodson v. North Carolina*, 428 U.S. 280 (1976), the Idaho Supreme Court held that the statute under which Creech had been sentenced was unconstitutional because it provided for a mandatory death penalty. Creech's sentence was commuted to life imprisonment.

Thomas Creech is a serial killer. He has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims -- who were shot, stabbed, beaten, or strangled to death -- have been recovered in seven states.

In 1981, while serving his life sentence in prison, Creech killed again. Creech was an inmate of the Idaho State Correctional Institution. The victim, Dale Jensen, had been convicted of car theft and was in the same institution. Some years earlier, Jensen had been shot in the head which had necessitated the removal of part of his brain and the placement of a plastic plate in his skull. His speech and motor functions were somewhat impaired.

Both Creech and Jensen were housed in maximum security where ordinarily only one inmate at a time was allowed out of his cell. Creech, however, had been made a janitor, and while performing his cleaning duties he was allowed to be out of his cell while another inmate also was out.

Creech and Jensen were not on good terms. They had argued over television and over Jensen's littering, which Creech, as a janitor, particularly resented. The circumstances surrounding Jensen's death are unclear because Creech has given different accounts. It appears that on the day of the murder, Jensen approached Creech and swung a weapon at him. The weapon consisted of a sock containing batteries. Creech took the weapon away from Jensen, who returned to his cell but emerged with a razor blade taped to a toothbrush. Jensen made some movement toward Creech, who then struck Jensen between the eyes with the battery laden sock, knocking Jensen to the floor. According to Creech's version (he being the only witness), Jensen swung at him with the razor blade, and he hit Jensen with the battery-filled sock. The plate in Jensen's skull was shattered, and blood from Jensen's skull splashed on the floor and walls. When Jensen was helpless, Creech kicked him about the throat and head. Sometime later, a guard found Jensen who was taken to the hospital where he died the same day.

Over the objections of his counsel, Creech pleaded guilty to first degree murder. At the sentencing hearing, testimony was offered by both the state and the defense on Creech's mental condition. The district court did not expressly rule on Creech's sanity, but he did rule that Creech was of adequate intelligence and capable of being trained and educated.

After the sentencing hearing, the judge found (as a mitigating factor) that Creech "did not instigate the fight with the victim" and that Creech "was initially justified in protecting himself." However, the judge also found (as aggravating factors) that, "[t]he victim, once the attack commenced, was under the complete domination and control of the defendant" and that "[t]he murder itself was extremely gruesome evidencing an excessive violent rage." The violence "went well beyond self-defense" and "appears to have been an intentional, calculated act." The judge sentenced Creech to death, saying he "intentionally destroyed another human being at a time when he was completely helpless."

After a couple of appeals and petitions in the Idaho courts and an unsuccessful petition to the United States Supreme Court, in 1985 Creech filed a habeas petition with the federal district court. The court denied the petition.

Creech went to the United States Court of Appeals for the Ninth Circuit, and in 1991 the Court of Appeals held part of the Idaho death penalty statute unconstitutional. The court also found two other defects in the original sentencing.

In 1993, the U.S. Supreme Court reversed the court of appeals and upheld the Idaho statute but did not consider the other aspects of the 9th Circuit's holding. The case was returned to the Idaho courts for resentencing. It remains pending.

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[Sources: The account of the prison murder is taken from *Idaho v. Creech*, 670 P.2d 463 (Idaho 1983), cert. denied, 465 U.S. 1051 (1984) and *Arave v. Creech*, -- U.S. --, 113 S. Ct. 1534 (1993). The dates of appeals and petitions were provided by the office of the Attorney General of Idaho, the Honorable Alan G. Lance.]